

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF ADMINISTRATION

In the Matter of the Proposed
Boundary Adjustment Docket for
Plainview Township and the City of
Plainview (A-7002)

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

The above-entitled matter initially came on for hearing before Christine Scotillo, Executive Director of the Municipal Boundary Adjustments Division of the Department of Administration (Department), on April 27, 2004 in the City Hall, 241 West Broadway, Plainview, Minnesota. The hearing was continued to allow for the gathering of additional evidence, and reconvened before Administrative Law Judge Raymond R. Krause at 9:30 a.m. on Thursday, September 21, 2004, in the Conference Room of the People's State Bank, 100 4th Avenue SE, Plainview, Minnesota. The hearing concluded that day. Interested persons were encouraged to submit additional information for the record. Additional information was submitted by the City of Plainview (City) and Plainview Township (Township). The hearing record closed with the receipt of the City's final letter on October 12, 2004.

Thomas M. Canan, Attorney at Law, 18 3rd Street SW, Suite 200, Rochester, Minnesota 55902, appeared on behalf of Petitioner, the City of Plainview. Donald L. DeVaughn, Attorney at Law, 100 4th Avenue SE, Suite 3, Plainview, Minnesota 55964, appeared on behalf of Plainview Township. Christine Scotillo, Municipal Boundary Adjustment Group, 50 Sherburne Avenue, Room 200, Saint Paul, Minnesota 55155, appeared on behalf of the Minnesota Department of Administration.

NOTICE

This Order is the final administrative decision in this case under Minn. Stat. § 414.031, and the Order of the Acting Director of the Office of Strategic and Long Range Planning dated November 8, 2002. Any person aggrieved by this Order may appeal to Wabasha County District Court by filing an Application for Review with the Court Administrator within 30 days of the date of this Order. An appeal does not stay the effect of this Order.^[1]

Any party may submit a written request for an amendment of these Findings of Fact, Conclusions of Law and Order within seven days from the date of the mailing of the Order.^[2] However, no request for amendment shall extend the time of appeal from these Findings of Fact, Conclusions of Law, and Order.

STATEMENT OF ISSUE

At issue in this proceeding is whether or not the Petition for Municipal Boundary Adjustment should be granted or denied based upon the factors set out in statute.^[3]

Based upon all of the testimony, exhibits and the record in this proceeding, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural History of this Proceeding

1. On December 15, 2003, all of the property owners within an area adjacent to the City of Plainview (City) filed a petition with the Minnesota Department of Administration, Division of Municipal Boundary Adjustments (MBA). The petition sought annexation of approximately 68 acres of property located in Plainview Township (Township) along the City's southern border. The petition waived the notice requirements of Minn. Stat. § 414.033, subd. 13. The area proposed for annexation (subject area) consists of three parcels (Parcel A, Parcel B, and Parcel C). Parcel A (owned by Kenneth and Jodi Sylvester, Husband and Wife) is described as follows:

That part of Southeast Quarter of the Southwest Quarter (SE ¼ SW ¼) of Section 17, Township 108 North, Range 112 West, Wabasha County, Minnesota, described as follows:

Commencing at the southeast corner of the Southwest Quarter of said Section 17; thence North 89 degrees 49 minutes 24 seconds West, assumed bearing, along the south line of said Southwest Quarter; 370.00 feet for a point of beginning; thence continue North 89 degrees 49 minutes 24 seconds West along said south line, 385.00 feet; thence North 23 degrees 35 minutes 20 seconds East, 416.27 feet; thence South 89 degrees 49 minutes 24 seconds East parallel with the south line of said Southwest Quarter, 150.00 feet; thence South 10 degrees 08 minutes 56 seconds East, 388.29 feet to the point of beginning. Being subject to an easement of the Township Road right of way over the southerly boundary thereof. Continuing 2.35 acres, more or less.

The above-described property to be platted as: Lot One (1), Block One (1), Twin Pines Subdivision.^[4]

2. Parcel B (owned by Charles Peluso and Paul Pehler, Partners of Piper Hills Golf Course, LLP) is described as follows:

Beginning at a point 35 rods South of the Northeast Corner of the Southwest Quarter of Section 17, Township 108, Range 11, thence South along the East line of said Southwest Quarter of Section 17, 125 rods to

the Southeast Corner of said Southwest Quarter of said Section 17, thence West along the South line of said Southwest Quarter, 69.4 rods, thence at right angles North 62.5 rods, thence at right angles West 38.4 rods, thence at right angles North 62.5 rods, thence at right angles East 107.8 rods to the place of beginning; excepting therefrom that part of the Southwest Quarter (SW $\frac{1}{4}$) of Section Seventeen (17), Township One Hundred Eight (108) North, Range Eleven (11) West, described as follows: Commencing at the Northwest corner of said Southwest Quarter (SW $\frac{1}{4}$); thence North 90 degrees 00 minutes 00 seconds East, along the North line of said Quarter Section (for purpose of this description bearing of said North line is assumed North 90 degrees 00 minutes 00 seconds East), a distance of 1672.28 feet; thence South 0 degrees 00 minutes 00 seconds, a distance of 1237.85 feet to the point of beginning of the parcel to be herein described; thence South 49 degrees 51 minutes 44 seconds East, 110.00 feet; thence North 40 degrees 08 minutes 16 seconds East, 130.00 feet; thence North 49 degrees 51 minutes 44 seconds West, 161.98 feet; thence North 57 degrees 42 minutes 20 seconds West, 241.93 feet; thence South 32 degrees 17 minutes 40 seconds West, 128.72 feet; thence South 57 degrees 42 minutes 20 seconds East, 223.75 feet; thence South 49 degrees 51 minutes 44 seconds East, 52.42 feet to said point of beginning, containing 1.17 acres, more or less; subject to reservations, restrictions, and easements of record..^[5]

3. Parcel C (owned by Timothy and Nancy White-Finne, Husband and Wife) is described as follows:

That part of the Southwest Quarter (SW $\frac{1}{4}$) of Section Seventeen (17), Township One Hundred and Eight (108) North, Range Eleven (11) West, described as follows: Commencing at the Northwest Corner of said Southwest Quarter (SW $\frac{1}{4}$); thence North 90 degrees 00 minutes 00 seconds East, along the North line of said Quarter Section (for purpose of this description bearing of said North line is assumed North 90 degrees 00 minutes 00 seconds East), a distance of 1672.28 feet; thence South 0 degrees 00 minutes 00 seconds, a distance of 1237.85 feet to the point of beginning of the parcel to be herein described; thence South 49 degrees 51 minutes 44 seconds East, 110.00 feet; thence North 40 degrees 08 minutes 16 seconds East, 130.00 feet; thence North 49 degrees 51 minutes 44 seconds West, 161.98 feet; thence North 57 degrees 42 minutes 20 seconds West, 241.93 feet; thence South 32 degrees 17 minutes 40 seconds West, 128.72 feet; thence South 57 degrees 42 minutes 20 seconds East, 223.75 feet; thence South 49 degrees 51 minutes 44 seconds East, 52.42 feet to said point of beginning, containing 1.17 acres, more or less.^[6]

4. On March 10, 2004, the Township objected to the proposed annexation.^[7] The MBA set the annexation petition on for hearing on April 27, 2003.^[8] Notice of the hearing was published in the Plainview News for three weeks prior to the hearing.^[9]

The hearing was opened on April 27, 2003 and immediately continued indefinitely pending completion of the agency review process and delegation to the Minnesota Office of Administrative Hearings (OAH).

5. A Notice of Reconvened Hearing in this matter was issued by OAH on August 20, 2004 and duly published in the Plainview News on September 9 and 16, 2004.^[10]

6. The reconvened hearing was conducted on September 21, 2004. The hearing concluded that day and the hearing record closed with the receipt of the last posthearing brief on October 12, 2004.

Physical Features

7. The City and the subject area are located in southern Wabasha County. The Township contains the subject area abuts the City on the south. The City has a population of 3,190 in 1,157 households.^[11] The Township has a population of 498 in 166 households. The Township has a total acreage of 20,997.^[12] The City of Elgin (Elgin) is located to the southwest of the City and is within one mile of the subject area.

8. The City has a well-developed network of roadways. There are approximately 15 miles of roadway in the City.^[13] The subject area is served by a minimal network of roadways. The major roads near the subject area are County Road 4 and Trunk Highway 42. TH 42 runs through the center of the City, passing to the north of the subject area. TH 42 travels west and connects the City with Elgin. County Road 4 branches off of TH 42 and travels south, running along the eastern border of the subject area. There are no direct means of accessing either TH 42 or County Road 4 from the subject area.^[14]

9. The only access to the golf course and restaurant is through a Township road.^[15] The road provides access to an easement that runs over a neighboring landowner's property. The easement contains a gravel roadway, which is narrower than the width required for maintenance of a paved surface.^[16] The easement connects with the driveway to the golf course and the restaurant. The driveway, and the parking lot connected with it, are shared by the owners of the golf course and the restaurant.^[17]

10. The area of the City is approximately 1,400 acres.^[18] The subject area is approximately 68 acres. The Township is approximately 20,997 acres. The subject area's topography consists of clay loam soils forming gently rolling hills.^[19] Current uses in the subject area are a golf course and a restaurant. Both of these businesses are served by wells for their water supply and individual sewage treatment systems (ISTS) for waste disposal. There are no public waters in the subject area, but a dry run crosses the subject area. The subject area is a floodplain that eventually flows into the Whitewater River (which is a Minnesota Department of Natural Resources protected trout habitat).^[20]

Population

11. In 1980, the City's population was 2,416.^[21] In 1990, the City's population was 3362. The current population of the City is 3,190, in 1,157 households. The subject area has no population. Two single-family residences are proposed to be built in the northwestern corner of the subject area. The anticipated future population would be 5 or 6.^[22] The Township has a current population of 498 in 166 households. The projected population for the City is 4,218 in 2020.^[23]

Land Use

12. The Township established the existing zoning of the subject area. The subject area is zoned as a Residential District under the Township system.^[24] Under this classification, lots for single-family dwellings without sewer connections must have a minimum width of 100 feet. With a sewer connection, the minimum lot size is 60 feet.^[25] The proposed zoning under the City system is a mix of R-1 (Residential) and C-2 (Commercial).

13. Uses in the subject area are the golf course and a restaurant. The owner of Parcel A proposes to build two houses on that land if the subject area is annexed.^[26] Parcel A is on the southern end of the subject area and has access to a Township road abutting the property.^[27]

14. When the City's comprehensive plan was formulated, 50 percent of the City's land area was committed to agricultural uses.^[28] Most of the remaining land area was residential. The City's central business district is approximately ten square blocks in the middle of the City.^[29] A retail center is located in the north central portion of the City and a small portion of the land in the City is used for industrial purposes.

15. By the time of the Petition, more than half of the City was converted to the R-1 (single family dwelling) classification.^[30] Areas zoned Agricultural occupied less than twenty percent of the City's area. A similarly sized portion of the City is zoned industrial. The industrial area is the southwestern corner of the City. The subject area is approximately 1,000 feet southeast of the industrial area.^[31]

Planning

16. The City has adopted a comprehensive plan.^[32] The plan includes methods of controlling growth, limiting incompatible uses, and preserving historic values. Policies are set out regarding housing, commercial activities, and educational, natural and cultural resources.

17. The City adopted zoning regulations in 1976.^[33] These regulations include subdivision regulations and an official zoning map (both adopted in 1976). The City has a fire code.^[34] The City does not allow new individual sewage treatment systems (ISTS or septic systems) to be installed. Instead, the City operates a sewer system and requires landowners to connect to the system. The City adopted a stormwater management plan in 1999.^[35]

18. Township zoning and ISTS requirements currently govern the subject area. There are no conflicts between the City's proposal and the existing land use controls.

Water and Sewer

19. The City provides water and sewer services to all areas within the municipal boundary.^[36] There is currently no water or sewer service in the subject area. Upon annexation, no new wells or septic systems would be allowed. The City will condition extending water or sewer service to the subject area on payment of the cost of the mains being borne by the landowners.^[37] The City expects to enter into a partnership with the property owners or the local developer of the two new residences to "help share the cost of the new mains."^[38]

20. The sewer main nearest to the subject area passes within a few hundred feet of the points where the connection would be made.^[39] The nearest water main terminates about one thousand feet from the subject area.^[40] Adding the anticipated loads from the subject area will not have any effect on the existing or future capabilities of the water and sewer system.^[41]

21. The number of residences that can be located in Parcel A (the Sylvester property) is dependent on the type of sewage treatment available. Due to the Township's ISTS standards, the size of the area required for septic drainage would limit the property to one residence.^[42] If the new construction could be connected to the City sewer system, the parcel could be subdivided into two lots.^[43] No cost estimate of making the water or sewer connection is available. No estimate of the value of the lot (as a single parcel or subdivided) has been made.

Police and Fire

22. The City has its own police department, overseen by a Chief of Police.^[44] Currently, emergency calls from the subject area are routed through Wabasha County and the nearest available officer is dispatched. Often the responding officer is from the Plainview Police Department, under the mutual aid agreement between the City and Wabasha County. The normal response time is from two to five minutes.^[45] The City intends to extend its law enforcement coverage to include the subject area.

23. The City provides fire protection through its own fire department. The subject area currently receives fire protection from the Township.^[46] The City would provide fire protection to the subject area if those parcels are annexed. No witness suggested the level of fire protection would change due to the annexation of the subject area.

Administration

24. The City is organized as a statutory city governed by a City Council consisting of a mayor and four council members. Day-to-day operations are overseen by a City Administrator.

Fiscal Matters

25. There is no anticipated impact on school district boundaries or adjacent communities. For 2004, the tax capability and rates^[47] for the affected entities are as follows:

	City	Township	Subject Area
Tax Capability	\$1,457,520	\$477,376	\$6,309
Tax Rates			
County	51.9630	53.4870	53.4870
Local Gov't	53.1000	23.6710	23.6710
School District	33.6570	33.8370	33.8370
Special Taxing Districts	<u>0.4710</u>	<u>0.4710</u>	<u>0.4710</u>
Total	139.1910	111.4660	111.4660

26. The City uses a housing and redevelopment authority (HRA) that issues bonds to finance projects. The special taxing district covering the City, the Township, and the subject area is for payment of the HRA bonds.^[48] As of December 31, 2003, the City had a total bond indebtedness of \$860,000.^[49] No indebtedness of the Township would be assumed as part of the annexation. The City noted that the annexation would impose a hardship on the Township through the loss of tax capacity, thereby making services more expensive per capita to the residents of the Township.^[50]

Extension of Services to Subject Area

27. Upon annexation, the City proposes to provide to the subject area services including fire protection, law enforcement, street improvements, and street maintenance.^[51]

Benefits to Subject Area

28. Upon annexation, property taxes in the subject area will modestly increase. No change to the levels of service in law enforcement, fire protection, and administrative services can be expected upon annexation.

29. The only benefit identified by the owner of Parcel A is that his property can be subdivided into two lots for residential development.^[52] No other changes to the subject area were of concern to him.

30. The owners of the golf course and restaurant identified the major benefit to be obtained through annexation is having the gravel road paved.^[53] The other identified benefits arise through having water and sewer service extended to the subject area. These are the only benefits to the subject area arising from the annexation.

31. At the time of the hearing, no discussions had been held between the property owners and the City regarding how paved road access would be obtained.^[54] Since the land providing the existing gravel road access is not in the subject area, the City would have to obtain right of way from another landowner.^[55] Testimony at the hearing suggested that the City would need to acquire land for the right-of-way to pave a road providing access to the golf course and restaurant.^[56] Such an acquisition would substantially increase the costs to the City and property owners in the subject area, beyond the benefit to be obtained through improving road access.

32. At the hearing, the Township indicated that it is ready to obtain the necessary right of way to pave the existing access road to the golf course and restaurant.^[57] The Township expects the process to start within one year.^[58] The City has not engaged in the planning needed to arrive at a cost estimate and has no plans to go forward with this road project in the near future.^[59] With the impediments to the City providing a paved road, the benefit accruing to the subject area through annexation is speculative and not a significant benefit.

33. The golf course well supplies water to the golf course and the restaurant.^[60] The only identified problem with the water supply is the presence of sand in the pumped water. Filters are used to remove the sand. Beyond wear and tear to the pumps, there is no problem posed to the subject area by using well water.^[61]

34. The restaurant uses an ISTS to treat wastewater. That septic system is failing.^[62] The restaurant must either replace its septic system or connect to the City's sewer system to address this problem. No impediment to the restaurant replacing its septic system had been identified in this proceeding. The failure of the septic system does not constitute a threat to public health, safety and welfare that would support annexation.

Environmental Impact

35. No significant environmental problems have been identified that would affect the proposed boundary adjustment.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter through the Minnesota Department of Administration under Minn. Stat. §§ 414.01, 414.02, 414.031, 414.11-12 and the Order of the Acting Director of the Office of Strategic and Long Range Planning, dated November 8, 2002. ^[63]

2. Proper notice of the hearing in this matter has been given.

3. The subject area described in the City's Petition is not about to become urban or suburban in character.

4. Municipal government in the subject area proposed for annexation in the City's Petition is not required to protect the public health, safety and welfare.

5. Annexation of the subject area described in the Petition to the City is not in the best interest of the subject area.

6. Citations to transcripts or exhibits in these Findings of Fact do not mean that all evidentiary support in the record has been cited.

7. These conclusions are arrived at for the reasons set out in the Memorandum which follows and which is incorporated into these conclusions by reference.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that the Petition for Municipal Boundary Adjustment filed by the City of Plainview is DENIED.

Dated this 29th day of October 2004.

/s/ Raymond R. Krause

RAYMOND R. KRAUSE

Administrative Law Judge

Reported: Taped. Two tapes. No transcript prepared.

MEMORANDUM

This is a proceeding under Chapter 414 to consider the Petition of the City of Plainview to annex 68 acres of land occupied by a golf course and a restaurant from the Plainview Township.

Statutory Factors for Annexation of Unincorporated Land

Minnesota Statutes, § 414.031, subd. 4, sets out fourteen factors to be considered when determining whether or not a petition for annexation of unincorporated land should be granted or denied. Of the fourteen, three factors are particularly relevant to the City's petition. The other factors have been adequately addressed in the Findings of Fact set out above.

(5) The present transportation network and potential transportation issues, including proposed highway development.

The property owners identified the quality of road access to the golf course and restaurant as the primary reason for pursuing the annexation. The existing access is by gravel road running over private land. The City has proposed replacing the existing access with a different route. An unidentified portion of the costs of property acquisition and paving the road would be assessed to the property owners. The Township has indicated either negotiation or condemnation would be required to obtain the rights to improve the existing access. While there is no adverse impact to the present or potential transportation network arising out of the proposed annexation, there is no compelling benefit arising from the proposed change either.

(7) Existing levels of governmental services being provided in the annexing municipality and the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of said services.

The only difference in services that would be afforded to the subject area is the connection to the City's water and sewer. For one landowner, the connection would permit division of the property into two lots. At the hearing, the property owners indicated that their agreement to receive these services is dependent upon the cost estimates that have not yet been made. Without any estimate of the cost to accomplish this connection, there is no basis for finding that these services will even be delivered. The golf course and restaurant have water from a well and wastewater handled by a septic system. Those options are available to the remaining landowner, at the cost of not dividing the lot for development into two residences.

The restaurant's failing septic system was identified as a reason for the annexation. The record contains nothing to suggest that a replacement septic system will be insufficient to meet the restaurant's needs.

(10) Fiscal impact on the annexing municipality, the subject area, the adjacent units of local government, including net tax capacity and the

present bonded indebtedness, and the local tax rates of the county, school district, and township.

The annexation of the subject area would have a small fiscal impact on the property owners of that area by modestly increasing their property tax rates. Those owners would join in the bonded indebtedness of the City, but there is no indication that such participation would cause any economic harm. Based on the evidence presented, there would be no significant economic impact on the City.

The loss of tax revenue to the Township could have a noticeable impact on the per capita tax burden on the remaining Township residents. The annexation of the subject area is unlikely to impose significantly greater costs on the Township, but neither will there be savings from services no longer provided. The Township did not introduce any evidence to quantify the impact of this loss of tax base, and therefore this factor has not been relied upon in arriving at the order regarding the annexation petition.

Annexation Standard

Minn. Stat. § 414.031, subd. 4(b)(1) allows for annexation if “the subject area is now, or is about to become, urban or suburban in character.” The City maintains that the population growth in the City, including anticipated future growth, and the addition of several single-family residences in the Township near the subject area demonstrates the changing nature of the area.

The subject area does not, and will not, meet this requirement. Platting an area for two residences is simply insufficient to demonstrate that an area is becoming suburban. The contrast between the subject area and the more densely developing areas in the City established this point very clearly.^[64] The City has areas northeast of the subject area that are laid out for future roads, but not yet platted for residences. The portion of the City immediately north of the subject area is unplatted and undeveloped.^[65] The remaining uses on the property remain unchanged from the 1960’s. The subject area does not meet the statutory standard for changing character toward an urban or suburban nature.

Annexation is appropriate to address threats to the public health, safety and welfare.^[66] Only one aspect of the subject area is related to this standard, and that is the status of the restaurant’s septic system. That system is failing and must either be replaced or a connection made to the City’s sewer system. There is no basis for concluding that a replacement septic system constitutes a public health threat. This statutory standard has not been met.^[67]

The remaining standard is if annexation “would be in the best interest of the subject area.”^[68] The property owners want to connect to City water and sewer. The owners of the restaurant and golf course want better road access. Absent a change in the City’s policies, the subject area must be annexed to allow the water and sewer connections. Private wells provide water to the subject area and ISTS is used to handle

the subject area's wastewater. There is no evidence to support the conclusion that the "best interest" standard is met regarding the water and sewer connections.

There is a complete absence of cost estimates for the proposed work. Regarding road access, the distance that would need to be acquired and paved is longer (and potentially much longer) from the City's road network than from the gravel road currently used. The required interconnection from the City side is likely to be more expensive than similar access using the existing easement. These additional costs are not in the best interests of the subject area.

As the Findings of Fact and the foregoing discussion set out, there are no factors that even modestly support annexation. Additionally, there are two factors that weigh against annexation. The slight benefits to the property owners are outweighed by the costs that would be imposed on those owners and the few future residents anticipated on the property. The benefit of a paved access road is available from the Township (probably at a lower cost to the owners of the restaurant and golf course). At the hearing, one affected landowner opined that having the Township pave the easement and having sewer access through a joint powers agreement would be the best solution.^[69]

Summary

The statutory standards for annexation have not been met in this proceeding. The parties are urged to address the issues identified in this proceeding by other means.

R.R.K.

^[1] Minn. Stat. § 414.07, subd. 2.

^[2] Minn. Rule pt. 6000.3100.

^[3] Minn. Stat. § 414.031.

^[4] Hearing Ex. 1, Item 1.

^[5] *Id.*

^[6] *Id.*

^[7] Hearing Ex. 1, Item 5.

^[8] Hearing Ex. 1, Item 7.

^[9] Hearing Ex. 1, Item 23.

^[10] City Ex. 1. A prior Notice of Reconvened hearing was rescinded, due to problems with the required publication of notice.

^[11] Hearing Ex. 1, Item 20.

^[12] *Id.*

^[13] Hearing Ex. 1, Item 19.

^[14] City Ex. 2.

^[15] Testimony of Steven Robertson, City Administrator, Tape 1.

^[16] Testimony of Charles Peluso, Tape 1.

^[17] *Id.*

^[18] Hearing Ex. 1, Item 19.

^[19] Hearing Ex. 1, Item 20, at 2.

[20] *Id.*

[21] Hearing Ex. 1, Item 20, at 1.

[22] Hearing Ex. 1, Item 19, at 2.

[23] The City's Comprehensive Plan contains this projection. Such an increase in population growth is dependent on significant housing development, given the past rate of population increase in the City. Hearing Ex. 1, Item 19, Attachments A and D.

[24] Hearing Ex. 1, Item 21, at 1-2.

[25] *Id.* at 3.

[26] Testimony of Kenneth Sylvester, Tape 1.

[27] City Ex. 2.

[28] Hearing Ex. 1, Item 19, Attachment D, at 3.

[29] *Id.* Attachment D, at 4.

[30] Hearing Ex. 1, Item 19, Attachment G. The zoning classifications do not necessarily reflect the actual degree of development of land in the City.

[31] *Id.*

[32] Portions of the plan accompany Hearing Ex. 1, as Attachments A and D.

[33] Hearing Ex. 1, Item 19.

[34] *Id.*

[35] *Id.*

[36] Hearing Ex. 1, Item 19.

[37] *Id.*

[38] *Id.*

[39] City Ex. 4.

[40] City Ex. 3.

[41] City Ex. 5; Testimony of Richard Turri, Plant Manager, Plainview-Elgin Sanitary District, Tape 2.

[42] Testimony of Sylvester, Tape 1.

[43] *Id.*

[44] Testimony of Randy Doughty, Chief of Police, Plainview Police Department, Tape 1.

[45] *Id.*

[46] Hearing Ex. 1, Item 20, at 5.

[47] Hearing Ex. 1, Item 20, at 6.

[48] Hearing Ex. 1, Item 20, at 6.

[49] *Id.*

[50] *Id.*, at 7.

[51] Hearing Ex. 2, Summary, at 2.

[52] Testimony of Sylvester, Tape 1.

[53] Testimony of Peluso, Tape 1.

[54] Testimony of Michael Burgdorf, City Public Works Director, Tape 1.

[55] *Id.* The route for this new access would come from TH 42 and follow an existing gravel road that parallels the highway. See City Ex. 2.

[56] Testimony of Michael Burgdorf, Tape 1; Testimony of Peluso, Tape 1.

[57] Testimony of John Koepsell, Tape 2.

[58] *Id.*

[59] Testimony of Robertson, Tape 1. The City would not commit to extending the road, sewer and water services within five years of the annexation of the subject area. *Id.*

[60] *Id.*

[61] Testimony of Peluso, Tape 1.

[62] *Id.* Tape 2.

[63] Ex. 14.

[64] See Hearing Ex. 1, Item 19, Attachment G.

[65] Hearing Ex. 1, Item 19, Attachment G.

[66] Minn. Stat. § 414.031, subd. 4(b)(2).

[67] The Township points out that, depending on the rate of failure, granting the annexation petition could cause a health problem. The gap between the City annexing the subject area and being ready to extend services could be five years. Testimony of Robertson, Tape 1. The City has not indicated what action

could be taken by the restaurant in the event that its septic system fails entirely before the connection can be made. This is also a concern since new ISTS installations are prohibited by the City.

^[68] Minn. Stat. § 414.031, subd. 4(b)(3).

^[69] Testimony of Pelosi, Tape 1.